

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Policy

3 (Amendment)

4 900 KAR 5:020. State Health Plan for facilities and services.

5 RELATES TO: KRS 216B.010-216B.130

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010,
7 216B.015(27), 216B.040(2)(a)2a

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires
9 the cabinet to promulgate an administrative regulation, updated annually, to establish
10 the State Health Plan. The State Health Plan is a critical element of the certificate of
11 need process for which the cabinet is given responsibility in KRS Chapter 216B. This
12 administrative regulation establishes the State Health Plan for facilities and services.

13 Section 1. The 2010 – 2012 State Health Plan [~~2009 Update to the 2007-2009~~
14 ~~State Health Plan as amended June 9, 2009~~] shall be used to:


- 15 (1) Review a certificate of need application pursuant to KRS 216B.040; and
16 (2) Determine whether a substantial change to a health service has occurred
17 pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

18 Section 2. Incorporation by Reference. (1) The 2010 – 2012 State Health Plan
19 [~~2009 Update to the State Health Plan as amended June 2, 2009~~] is incorporated by
20 reference.

- 1 (2) This material may be inspected, copied, or obtained, subject to applicable
- 2 copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor,
- 3 Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

900 KAR 5:020

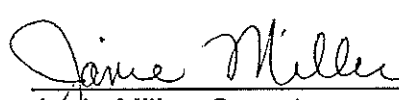
REVIEWED:



Carrie Banahan, Executive Director
Office of Health Policy

Date

APPROVED:



Jamie Miller, Secretary
Cabinet for Health and Family Services

4/15/10

Date

900 KAR 5:020

PUBLIC HEARING AND COMMENTS:

A public hearing on this administrative regulation shall, if requested, be held on May 21, 2010, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 5:020

Contact Person: Carrie Banahan or Shane P. O'Donley, (502) 564-9589

1. Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
 - (b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 - 2012 State Health Plan by reference.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 216B.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS 216B.
2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan.
 - (b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2009, so the next triennial plan is being prepared for 2010-2012.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) which requires that the State Health Plan be prepared triennially.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.
3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate

of Need Program, and local communities that plan for, use, or develop community health care facilities.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will apply to potential Certificate of Need applicants for Diagnostic and Therapeutic Equipment and Procedures.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The criteria for applicants proposing to establish fixed site diagnostic cardiac catheterization has been made less stringent, applicants may now propose to expand their existing diagnostic cardiac catheterization service to also provide primary (emergency) angioplasty services on a two (2) year trial basis, and applicants may propose to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services without a comprehensive cardiac surgical program (including open-heart surgery) within the facility. These changes may increase access to cardiac catheterization services to areas of the state that do not currently have these services.
5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No cost
 - (b) On a continuing basis: No cost
6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

9. TIERING: Is tiering applied? (Explain why or why not)
- Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 5:020 Contact Person: Carrie Banahan or Shane O'Donley

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2010 – 2012 State Health Plan by reference.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.
 - (c) How much will it cost to administer this program for the first year? None.
 - (d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

**COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

900 KAR 5:020, State Health Plan for Facilities and Services

Summary of Material Incorporated by Reference

The 2010 – 2012 State Health Plan is being incorporated by reference. The 2010 – 2012 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

- a. The 2010 – 2012 State Health Plan includes revisions to the following:
- b. The introductory page was changed to reflect the change in dates within the title from the 2009 Update to the 2007 – 2009 State Health Plan to the 2010 – 2012 State Health Plan.
- c. Page iii, under the subheading “Purpose” the reference to the proposed edition of the State Health Plan was changed.
- d. Page iii, under the subheading “Technical Notes” Section 3 was modified to replace the reference to “Form# 10” with “Form #10A” and to replace the reference to “900 KAR 6:050” with “900 KAR 6:055”.
- e. Page iii, under the subheading “Technical Notes” Section 4 was modified to replace the reference to “900 KAR 6:050 Section 7 (2) – (6)” with “900 KAR 6:070 Section 2 (2) thru (6)”.
- f. Page iv, under the subheading “Technical Notes” Section 10 was modified to replace the language “on the effective date of this Plan” with “each January 1st”.
- g. Page iv, under the subheading “Technical Notes” Section 12 was added to define the terms child, adolescent, pediatric, adult and geriatric.
- h. Page 1, under the heading “A. Acute Care Hospital” and the subheading “Definitions” was modified to replace the reference to “Division of Community Health” with “Division of Health Care Facilities”.
- i. Page 7, under the heading “C. Comprehensive Physical Rehabilitation Hospital Beds”, and the subheading “Definitions” was modified to delete the term “or a part”.
- j. Page 14, under the heading “A. Psychiatric Hospital Beds” and the subheading “Definitions” was modified to delete the definitions of child, adolescent, adult and geriatric.

- k. Page 14, under the heading "A. Psychiatric Hospital Beds" and the subheading "Review Criteria" Section 1 was modified to include geriatric psychiatric beds with adult psychiatric beds.
- l. Page 21, under heading "A. Nursing Facility Beds" and the subheading "Review Criteria" Section 3 was added to include a provision that recognizes nursing facility beds which were previously authorized pursuant to an emergency.
- m. Page 22, under the heading "B. Home Health Services" and the subheading "Review Criteria" Section 3 was modified to replace the reference to "900 KAR 6:050 Section 12" with "900 KAR 6:080 Section 2".
- n. Page 29, under the heading "A. Cardiac Catheterization Services" and the subheading "Definition" was modified to include definitions for Diagnostic Cardiac Catheterization, Therapeutic Cardiac Catheterization, Laboratory and Planning Area.
- o. Page 29, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 1 was modified to recalculate the methodology which determines the State Health Plan need for an additional fixed-site diagnostic cardiac catheterization program.
- p. Page 30, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 2 was modified to create a process whereby an applicant proposing to expand their existing diagnostic cardiac catheterization service may be approved to also provide primary (i.e. emergency) Percutaneous Coronary Intervention (PCI) services on a two year trial basis.
- q. Page 32, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 3 was modified to create a process whereby an applicant proposing to expand their existing diagnostic cardiac catheterization service may be approved to also provide comprehensive (diagnostic and therapeutic) cardiac catheterization services on a two year trial basis.
- r. Page 34, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 4 was modified to create a process whereby an applicant may be approved to permanently provide comprehensive (diagnostic and therapeutic) cardiac catheterization services.
- s. Page 34, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 5 was modified to eliminate the references to the level of statewide live births.

- t. Page 34, under the heading "A. Cardiac Catheterization Services" and the subheading "Review Criteria" Section 6 was modified to restrict approval applications to establish mobile cardiac catheterization services.
- u. Page 45, under the heading "Ambulatory Surgical Centers" and the subheading "Review Criteria" Section 1 was modified to include a reference to the *Kentucky Annual Hospital Utilization and Services Report*.
- v. Page 49, under the heading "E. Private Duty Nursing Services" and the subheading "Review Criteria" Section 2 was modified to replace the reference to 900 KAR 6:050 Section 12 with 900 KAR 6:080 Section 2.
- w. The total number of pages incorporated by reference in the administrative regulation is fifty-three (53).